

No. 9950

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**In the United States Circuit Court of Appeals  
for the Ninth Circuit**

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UNITED STATES OF AMERICA, APPELLANT

*v.*

GARAVENTA LAND AND LIVESTOCK CO. ET AL., APPELLEES

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEVADA

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BRIEF FOR THE UNITED STATES

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**FILED**

JAN - 9 1942

PAUL P. O'BRIEN,  
CLERK



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## **OPINION BELOW**

The opinion of the district court (R. 36-49) is reported in 38 F. Supp. 191. The judgment, the findings of fact, and the conclusions of law appear at pp. 35, 89-102, and 103, respectively.

## **JURISDICTION**

This is an appeal from a final judgment entered on March 8, 1941 (R. 35). Notice of appeal was filed on June 7, 1941 (R. 58-59). The jurisdiction of this Court is invoked under Section 128 of the Judicial Code, as amended, 28 U. S. C. sec. 225a.

## **QUESTION PRESENTED**

Whether the defendant did not lose all right to purchase land under the Act of June 7, 1924, c. 311, 43

Stat. 596, by failing to pay deferred installments of the purchase price within the time set by the Secretary of the Interior.

#### STATUTE INVOLVED

The material portions of the Act of June 7, 1924, c. 311, 43 Stat. 596, are summarized in the Statement, and are set forth in full in the Appendix, pp. 10-11, *infra*.

#### STATEMENT

This was an action by the United States to evict the defendant from land within the Pyramid Lake Indian Reservation in Nevada (R. 2-5). The essential facts are as follows:

The Act of June 7, 1924, 43 Stat. 596, authorized the Secretary of the Interior to sell to white settlers or their transferees, under such terms, conditions and price per acre as he might prescribe, the lands in the Pyramid Lake Indian Reservation which they had settled upon, occupied and improved for twenty-one years or more (sec. 1). It also required that all sales be by private cash entry, the proceeds to be deposited in the federal treasury subject to appropriations by Congress for the Piute Indians of the reservation (sec. 1); that all sales be made through the local land office within ninety days after the Secretary fixed the price of the land (sec. 4); and that the United States enter upon and take possession of the land for the use and benefit of the Piute Indians if entry were not made within that period (sec. 4).

In March 1925, after having approved a classification and appraisal of the land subject to sale, the Sec-



retary directed that settlers be allowed ninety days from February 7, 1925, the date of the approval and fixing of the prices, within which to pay the full purchase price at the local land office (R. 96, 135-156). He also gave instructions that the settlers be advised that if entry were not made within the time specified the United States would take possession of the land and all their claims to the land and improvements thereon would be forfeited (R. 155-156). However, in May 1925, the Secretary modified his earlier instructions and permitted the settlers to pay one-fourth down and the balance in three equal annual installments with interest on the deferred payments at five percent per annum (R. 96, 168).

In September, 1925, the General Land Office allowed an application to purchase which the defendant had filed in March, 1925, together with a down payment of \$1,853.92 on a total purchase price of \$7,395.70 (R. 96, 172-173). The defendant defaulted on the deferred payments, but the General Land Office refrained from cancelling its application because of existing economic conditions and the pendency of proposed legislation to reduce the purchase price (R. 96). In September, 1931, however, it directed that the defendant be allowed ninety days from notice within which to pay the full deferred balance and interest (R. 96.) In December, 1931, before that ninety-day period expired, the General Land Office notified the defendant that it was allowed until January 31, 1932, to pay one-third of the outstanding balance, and interest; and that, in case of default and in the absence of an appeal to the Secre-

tary, its application would be cancelled, the initial payment forfeited, and the case closed without further notice (R. 96-97). The defendant again defaulted, but no further action was taken on its application pending consideration of a Senate resolution which required the Department of the Interior to withhold further collections from settlers pending an inquiry by a Senate committee with respect to the existing appraisals (R. 97).

In May 1935, the General Land Office advised the defendant that the purchase price for the land it was seeking to purchase had been reduced from \$7,395.70 to \$4,005.70, thus leaving due and unpaid \$2,151.78 after credit given for the down payment of \$1,853.92; that it was allowed thirty days to pay the principal and interest in full or to pay the interest only; and that its application would be cancelled if such payment was not made or an appeal taken to the Secretary (R. 97).

The defendant appealed for a further reduction of the purchase price in the light of existing economic conditions (R. 98). In March 1936, the General Land Office notified it that the Secretary required that interest due and unpaid should be paid within thirty days; that one-third of the principal remaining to be paid should be paid within six months; and that, failing this, its application would be cancelled without further notice (R. 98). In May 1936, the Secretary ordered the defendant's application cancelled when it failed to pay the interest as required (R. 98).

The present action was instituted in February 1938 (R. 2-6). The complaint set forth that the defendant



had failed to complete the purchase of the land within the time allowed; that it had refused to vacate after written demand; and prayed for judgment of eviction. The defendant filed a motion to dismiss on the ground that the Secretary had no authority to cancel its application (R. 2-9) and this motion was denied (R. 10).

Thereafter the defendant filed answer (R. 11-21), in which it was alleged that ejectment could not be maintained because the Secretary had no power of cancellation; that the defendant had tendered full payment at the local land office, which was refused; and that it was ready, willing, and able to pay.

On March 8, 1941, the district court filed its opinion (R. 36-49). Applying section 4 of the Act of June 7, 1924, the court held the defendant's initial payment constituted a seasonable entry and that its default on the deferred payments did not present a condition which required the Government to enter upon and take possession of the land. It stated that "such drastic remedy" was not needed "to protect the interests of the United States in the sales agreement" (R. 48), and that (R. 48-49):

It is not the policy of the Government to enforce strictly the provisions of the land laws against settlers on the public domain where circumstances, like those occasioned during a period of depression, may make it difficult for such settlers to comply.

On the same day judgment for the defendant was entered in the minutes of the court (R. 35). The Government filed a motion for reconsideration of the opin-

ion and decision, which was denied (R. 51-52). It then filed this appeal (R. 58-59).

On application by the district judge, this Court remanded the case for entry of findings (R. 76-77). Thereafter, the district court entered its findings and conclusions (R. 89-103), holding (R. 103) that it would be inequitable and unjust to permit cancellation of the sales agreement.<sup>1</sup>

#### SPECIFICATION OF ERRORS

The specification of errors (R. 284-285) may be summarized as follows: The defendant acquired no right to the land, having defaulted on the deferred payments. The district court, therefore, erred in failing to enter judgment in favor of the United States.

#### ARGUMENT

**Having defaulted on the deferred payments, the defendant  
lost all right to the land**

The district court erred in holding that the defendant was entitled to retain possession of the land despite its failure to comply with the time limit set by the Secretary for payment of the purchase price. Under the Act of June 7, 1924, section 1, the Secretary was authorized to fix the terms and conditions of sale. In addition, he had ample power and authority to make

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<sup>1</sup> There were twelve settlers who applied to purchase land under the Act of June 7, 1924. Of these, seven completed their payments and received patents, and five defaulted (R. 95). The present action and four similar actions were brought against the five in default. The four other cases are held in abeyance pending the result of this case (R. 40).

rules and regulations governing the sales agreement with the defendant, under the power and authority vested in him by general statutes to supervise and control the disposal of public lands. R. S. sec. 441, 5 U. S. C. sec. 485; R. S. sec. 453, 43 U. S. C. sec. 2; R. S. sec. 2478, 43 U. S. C. sec. 1201. Cf. *Cameron v. United States*, 252 U. S. 450, 459–463 (1920); *Michigan Land and Lumber Co. v. Rust*, 168 U. S. 589, 592–593 (1899); *Hawley v. Diller*, 178 U. S. 476, 488–489 (1897); *Standard Oil Co. of California v. United States*, 107 F. 2d 402, 409–414 (C. C. A. 9, 1939), certiorari denied, 309 U. S. 654, 673.

Pursuant to the authority thus held by him, the Secretary prescribed a time limit within which the defendant was to pay for the land or suffer cancellation of its purchase application (R. 98). This regulation had the force and effect of law. It was the same as if it were an incorporated part of the Act of June 7, 1924, or as if it were an independent enactment by Congress. The defendant was bound to comply with the time limit set by the Secretary or suffer the loss of all right to the land. *Cosmos Exploration Co. v. Gray Eagle Oil Co.*, 112 Fed. 4, 11–12 (C. C. A. 9, 1901), affirmed 190 U. S. 301 (1903); *Standard Oil Co. of California v. United States*, 107 F. 2d 402, 413 (C. C. A. 9, 1939), certiorari denied, 309 U. S. 654, 673. In this case the defendant failed to complete payment of the purchase price on time (R. 98), and the Secretary cancelled its application. It follows that the defendant has no right to the land and that the United States can recover possession.

The district court held (R. 48-49, 103) that the Government ought not to be able to maintain ejectment because of the defendant's default on the deferred payments. It said that the interests of the United States did not require such a remedy, and that it was contrary to governmental policy strictly to enforce the land laws in a case such as this (R. 48-49). But clearly such considerations were for the Secretary to determine. The Act of June 7, 1924, confided in him the sole and exclusive authority to determine what the interests and policy of the United States demanded under all the circumstances of the case. The record shows (R. 96-98) that he not only granted extensions to the defendant but also reduced the purchase price almost in half because of economic conditions, in order to assist the defendant. The record also shows (R. 98) that the Secretary gave further consideration to the question of the defendant's ability to pay when it appealed for an additional reduction in the purchase price, before he cancelled the application. Thus it can hardly be said that a judgment of eviction would be drastic.

The district court obviously was influenced by equitable considerations (R. 46-49, 103). But it must be remembered that this is not a case of a sales agreement between an ordinary vendor and vendee. The Government here seeks to enforce a public land law and the regulations of the Secretary thereunder. In such case general principles of equity cannot be applied to frustrate enforcement of the law or to thwart public policy. *Pan American Co. v. United States*, 273 U. S. 456, 505-509 (1927); *Utah Power & Light Co. v. United States*,

243 U. S. 389, 409 (1917); *Causey v. United States*,  
 240 U. S. 399, 402 (1916); *Heckman v. United States*,  
 224 U. S. 413, 446-447 (1912).

# CONCLUSION

It is, therefore, submitted that the judgment should be reversed.

Respectfully,

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JANUARY 1942.



## APPENDIX

The material portions of the Act of June 7, 1924, c. 311, 43 Stat. 596, are as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the Secretary of the Interior is hereby authorized to sell to settlers or their transferees, under such terms, conditions, and price per acre as the said Secretary may prescribe, any lands in the Pyramid Lake Indian Reservation, in the State of Nevada, that have been settled upon, occupied, and improved by said settlers and their transferees in good faith for a period of twenty-one years or more immediately preceding the passage of this Act: Provided, That no more than six hundred and forty acres shall be sold to any one person or corporation: Provided further, That said sales shall be by private cash entry after it has been shown to the satisfaction of the Secretary of the Interior that the lands applied for have been settled upon, occupied, and improved as required by this Act, and in addition to such price per acre as may be fixed by the Secretary of the Interior all entrymen hereunder shall pay the same fees and commissions as provided by law where public lands are disposed of at \$1.25 per acre. The proceeds of said sales shall be deposited in the Treasury of the United States and be subject to appropriations by Congress for the Piute Indians of the said Pyramid Lake Indian Reservation.*

\* \* \* \* \*

SEC. 4. All sales in accordance with section 1 of this Act shall be made through the local land

office within ninety days after the price of the land shall have been fixed by the Secretary of the Interior: *Provided*, That where entry is not made within the time specified, the United States shall enter upon the premises and take possession thereof for the use and benefit of the Piute Indians of the Pyramid Lake Indian Reservation.

